IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2012 of 2007

Ms.Tripti Vyas — Petitioner
Vs.
Ahlers (India) Pvt.Ltd. & anr. — Respondents

Mr.Sujit Bhattacharya and S.Malik with Mr.Nitin Raut for petitioner.

Mr.A.Z.Mookhitiar with Mr.Dinesh Mishra and Mr.A.V.Yadav for resp.no.1.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 30, 2007.

P.C.

. Heard the learned counsel for the petitioner.

The petitioner prays for quashing the proceedings in C.C.No.6740/SS of 2005 presently pending before the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai and having failed in the revision proceedings for quashing the order of issuance of process The main contention raised by the learned counsel for the petitioner is that the learned Metropolitan Magistrate lacks the territorial jurisdiction to entertain such a complaint. He further submitted that the complainant - company is based at Chennai in as much it has its registered

office at Nicholas Road, Chetpet Chennai and the drawer is based at Jaipur. He also pointed out that the dishonoured cheques were drawn over a Bank at Jaipur and they were remitted with the Bank at Chennai. The dishonour notice has been received at Chennai. As against this the statutory demand notice has been issued by the complainant on dishonour of cheques from Mumbai and this only event cannot be the reason to vest jurisdiction with the learned Metropolitan Magistrate at Mumbai. In support of these contentions, he placed reliance on the decisions of this Court in the case of Laxmi Travels Vs. G.E. Countrywide Consumer & anr. **[2006 All MR (Cri) 2482]** as well as Shri Pradeep Manichand Gadiya vs. The State of Maharashtra (Criminal Writ Petition No.1351 of 2002 decided on 13/9/2005 and unreported).

. The learned counsel for the complainant - company on the other hand, has pointed out that there could be no dispute regarding the complainant - company having a branch office at Mumbai. He has also referred to the documents viz. the bills which have been issued through the Branch Office at Mumbai and has pointed out that the bills indicate regarding the payments to be made / received at Mumbai. He

also stated that the bill was finalised at Mumbai. However, all these matters are to be decided on the basis of the evidence that will have to be adduced before the trial Court and it is not the case that only the demand notice under Section 138(b) of the Negotiable Instruments Act, 1881 has been issued from Mumbai and, therefore, the complaint has been filed before the learned Metropolitan Magistrate at Mumbai. Case will have to be decided even on the issue of territorial jurisdiction on the basis of the evidence that the parties may adduce.

. It was pointed out further that non-bailable warrants have been issued against the petitioner who is the Proprietress of Vivek Harsh International. It is also stated that recording of evidence of the complainant is over. He undertakes that the petitioner will appear before the trial Court within a period of four weeks from today. However, it would be necessary that the accused is allowed to lead evidence on merits as well as on the point of territorial jurisdiction even though recording of evidence of the complainant has been closed.

. Hence the petition is rejected. However, if

the petitioner appears before the trial Court on 27th November 2007 and applies for withdrawal of the non-bailable warrant, the non-bailable warrant so issued will stand suspended till 30/11/2007. In addition the petitioner is at liberty to apply for adducing evidence in support of defence that she may take including territorial jurisdiction as well as she will be at liberty to cross-examine the complainant, if such application is made on the date she appears before the trial Court.

. Writ to go to the trial Court forthwith.

(B.H.MARL